IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1565 OF 2003

IN

SUIT NO. 3041 OF 1988

State Bank of India .....**Plffs.**
vs.
M/s.R.H. Brothers .....**Defnds.**

Mr.A.S. Doctor with Mr. Jay Dalal
I/b. Bachubhai Munim for the plffs.
Mr. S. Srikrishna with Mr. Ashok Purohit
for the defendants in support.

CORAM: S.U. KAMDAR, J.

DATE : 23rd September, 2005.

P.C. :.

1. The present motion is taking out for setting aside an ex-parte decree dated 17.3.2003 and liberty to file written statement. Suit is of 1988. Written statement has not been filed. The decree today is about Rs.3.00 lacs. In view of the fact that Rs.75,000/- was deposited towards the leave to defend I offered the plaintiff to restore the suit on a further condition to deposit Rs.2.00

lacs. however the learned counsel for the defendant states that it is not possible to deposit any such amount. Under O.37 R.4 decree cannot be set aside unless a special case is made out or an imposing of terms. In the present case no such ground is made out indicating any special circumstances. Written statement is not filed for almost 17 years. Now under the amended provisions of the CPC written statement is required to be filed within 90 days. Though the said provisions do not apply to the Original Side of High court because the said provisions are modified by the High Court rule but the Supreme Court in the case of Salem Bar Association II vs. Union of India reported in 2005(6) SCC 344 has held that the legislative mandate of 90 days of filing written statement should be always taken into consideration even while exercising the inherent power of the court to extend time beyond the period of 90 days. and only in rarest of rare cases that the extension should be granted. In the present case delay is of 17 years. In that view of the matter, motion dismissed.

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sd/-

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